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April 3, 2002

TO COUNTY ASSESSORS, COUNTY COUNSELS, AND INTERESTED PARTIES:

REVISION OF PROPERTY TAX RULE 462.060

Letter To Assessors 2002/013 announced that a request to amend Property Tax Rule 462.060, *Change in Ownership - Life Estates and Estates for Years*, was made by Mr. James Bone of Squar, Milner & Reehl LLP. While Board staff is not endorsing the changes to the rule, a draft of the rule with proposed amendments was enclosed with the LTA. The proposed language adds an exclusion from change in ownership for life estates purchased by persons over age 55. Interested parties were asked to provide comments to the draft rule.

Enclosed is an agenda matrix compiled from comments received from interested parties. This information is provided to you in advance of the interested parties meeting since these comments will form the primary discussion topics at the meeting.

On April 12, 2002, staff will meet with interested parties to discuss comments received and identify each party's position regarding the proposed draft of the rule. The meeting is scheduled to start at 9:30 a.m. in Room 122, Board of Equalization, 450 N Street, Sacramento. After the interested parties meeting, the project will proceed as follows:

- Staff will submit an issue paper and other required documents for the Property Tax Committee (PTC) meeting by May 17, 2002.
- The Board's Property Tax Committee will hear discussion regarding the rule at its May 29, 2002 meeting.

This letter and all future documents regarding this project will be posted to the Board's Web site (www.boe.ca.gov) and can be accessed by way of: (1) Property Taxes, (2) Property Tax Committee Work Plans, and (3) Property Tax Committee Work Plans 2002.

April 3, 2002

If you have any questions or if you plan to attend the interested parties meeting, please contact Mr. Lou Ambrose (916) 445-5580, lou.ambrose@boe.ca.gov.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property Taxes Department

DJG:lt
Enclosure

**PROPOSED REVISION OF PROPERTY TAX RULE 462.060,
CHANGE IN OWNERSHIP-LIFE ESTATES AND ESTATES FOR YEARS**

MATRIX OF COMMENTS TO FEBRUARY 13, 2002 LETTER

Item	Source	Comments to proposal to add an exclusion from change in ownership for life estates purchased by persons over age 55	Staff Position
1	Placer County Assessor	<p>Expressed concern regarding the proposed rule revisions. Specific concerns and questions are as follows:</p> <ul style="list-style-type: none"> • Adding this exclusion is contrary to all current rules regarding life estates. This is an exclusion from reassessment based solely on a transferee's age. • If granting of such a life estate is excluded from change in ownership, what happens upon the termination of such life estate? Is it still going to be a change in ownership under section 61(g)? • What is meant by "purchase?" What happens if the life estate interest isn't "purchased", but is a gift? • Would there be any limit to the number of life estate interests a person could hold? Would there be a limit to the types of property that would be subject to these life estates? • Will this be retroactive? 	<p>Agree - contrary to statutory rule.</p> <p>Presumably no change in ownership would result.</p> <p>It is our understanding that rule is limited to purchases only.</p> <p>Not according to the plain language.</p> <p>Rules are declaratory of existing law.</p>
2	Los Angeles County Assessor	<p>Opposes and strongly objects to the proposed amendment due to a lack of statutory authority and creation of potential loopholes. The Assessor provides the following comments for his objections:</p> <ul style="list-style-type: none"> • <u>Lack of Statutory Authority</u> Revenue and Taxation Code section 60 et seq. govern change in ownership including life estate transfers, and have not been amended since their enactment in 1979, to change the treatment of life estates. <p>These sections implemented the policy recommendations of the Proposition 13 Task Force which determined that certain transfers, such as long-term leases, transfers of stock in corporations, and</p>	<p>Agree - rule amendment lacks statutory authority.</p>

Item	Source	<p align="center">Comments to proposal to add an exclusion from change in ownership for life estates purchased by persons over age 55</p>	Staff Position
		<p>leases of publically-owned land, while not fee simple conveyances under real property law, resulted in changes in ownership as transfers of real property interests substantially equal to the value of the fee interest. Likewise, the Legislature determined that life estates are substantially equal to the value of the fee interest. Although no specific provision defines the creation of a life estate as a change in ownership, section 61(g) specifically provides that the transfer upon termination of a life estate is a change in ownership unless excluded by other provisions not applicable to this discussion. The life tenant holds the primary ownership interest, i.e. substantially equivalent to the value of the fee, and the transfer of that interest results in a change in ownership. Additionally, section 62(e) excludes as a change in ownership a transfer in which the transferor reserves a life estate. In that case, there is no change in ownership because, prior to the transfer, the grantor holds a fee interest and by retaining a life estate does not transfer the primary ownership interest. Consequently, upon termination of the reserved life estate, the subject property undergoes a change in ownership and is to be reassessed.</p> <p>Both section 61(g) and section 62(e) provide that a termination of a life estate results in a change in ownership regardless of the age of the life tenant. In view of the plain language of those provisions, it is clear that the Legislature had no intention to provide different treatment for granted life estates based on the age of the life tenant.</p> <ul style="list-style-type: none"> • <u>Potential Loopholes</u> <p>The problem is that the proposed rule amendment language does not require measuring life to be that of the purchaser of the granted life estate. A young person, for example, who desired to purchase a property with the exception of holding for a five- or ten year period, might be able to negotiate the purchase of a life estate in the property, measured by the lives of an adequate number of healthy 55 year olds to ensure that his interest would not terminate before he would want to dispose of the property anyway. An industry might well develop whereby corporate owners would sell "life estates" in commercial properties, accepting that when they later acquired the remainder, there would be a reassessment. Or, they might immediatly sell the remainder interest to a third party who would likewise accept the future reassessment upon possession of the property. Or, the "life tenant" might sell the "life estate" to the owner of the remainder. Or to anyone. Or, the owner of the "remainder" might sell it to the "life tenant" when it suited their mutual purposes. In any such situation, there would be a loss of property tax revenue in a manner not contemplated or authorized by the Legislature.</p>	

Item	Source	Comments to proposal to add an exclusion from change in ownership for life estates purchased by persons over age 55	Staff Position
3	BOE Staff	<p>Staff provides the following comments regarding the proposed amendment:</p> <ul style="list-style-type: none"> • There exists no statutory authority for creating an exception to the rule that a life estate is substantially equal to the value of the fee interest for the reason that the anticipated term of the life estate may be less than 35 years in consideration of the life tenant's age at the time of creation. For purposes of change in ownership, all life estates are treated in the same manner, regardless of duration. • The court of appeal has held that the transfer of a life estate of any duration is a change in ownership. In <u>Leckie v. County of Orange</u>, the 4th District Court of Appeal held that the transfer of a life estate results in a change in ownership because "[t]he transferee receives a present interest in the property, the beneficial use of the property and the primary interest under the value equivalency test, which qualifies as a change of ownership under section 60." In reaching its conclusion, the court cited the task force's finding that "[t]he life tenant has the dominant or primary interest under the 'value equivalence' element of the general change in ownership definition . . ." In that case, the transferee was 58 years old at the time of the vesting of the life estate that resulted in the change in ownership. • The proposal would result in a change in ownership if a person over 55 years old granted real property in fee but retained a life estate. The conveyance effects the transfer of the present beneficial interest at the termination of the life estate. The grantor retains the present beneficial interest by occupying the property for the rest of his or her life. 	N/A